

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America,

Case No. 3:15-cr-467

Plaintiff,

v.

MEMORANDUM OPINION

Arely Gonzalez-Corea,

Defendant.

Defendant Arely Gonzalez-Corea seeks to suppress evidence obtained during and following a December 3, 2015 traffic stop of a vehicle she was driving. (Doc. No. 36). On October 25, 2018, I held an evidentiary hearing during which two law enforcement officers involved in the stop testified and the parties offered oral argument in support of their respective positions. After hearing the arguments of counsel and reviewing the evidence submitted, I conclude the traffic stop was permissible under the Fourth Amendment and deny Gonzalez-Corea's motion.

I. BACKGROUND

Shortly after 11:30 p.m. on December 3, 2015, a white Ford Expedition drove past Rick Anderson, a trooper with the Ohio State Highway Patrol, who had parked his cruiser in the turn-around near mile marker 85 on the Ohio Turnpike. Anderson began following the SUV, first driving in the left-hand lane before moving to the center lane where the Expedition was travelling. The Expedition moved to the right-hand lane while Anderson continued traveling in the center lane. After Anderson switched to the right-hand lane, the Expedition moved back to the center lane,

where Anderson eventually followed. After witnessing the driver commit several apparent marked-lane violations over the course of four-minute period, Anderson activated his lights and stopped the vehicle near the exit at mile marker 91. The trooper was working in conjunction with a K-9 officer from the United States Border Patrol, Michael Lalonde, and Lalonde also participated in the stop. Gonzalez-Corea was driving the Expedition with her co-defendant, Esmeralda Hernandez, in the passenger seat, and two juveniles in the middle row. The stop and the ensuing investigation revealed there were open containers of alcohol near the front seats, the juveniles were in the country illegally, and that Gonzalez-Corea and Hernandez were transporting them through the mid-West to the East Coast.

II. DISCUSSION

Gonzalez-Corea contends any evidence obtained pursuant to the traffic stop must be suppressed because the video from the trooper's dash camera does not reveal a traffic violation and the only reason the trooper stopped her vehicle was because it bore Texas license plates. I conclude the government has presented sufficient evidence to establish Trooper Anderson had reasonable grounds to believe Gonzalez-Corea violated Ohio's marked lanes statute and deny her motion to suppress.

"It is well established that a police officer lawfully may stop a car when he has probable cause to believe that a civil traffic violation has occurred, or reasonable suspicion of an ongoing crime." *United States v. Jackson*, 682 F.3d 448, 453 (6th Cir. 2012) (citing *United States v. Blair*, 524 F.3d 740, 748 (6th Cir. 2008)). Anderson testified he stopped the Expedition solely because he witnessed the driver commit multiple marked lane violations. He had no prior knowledge of the occupants of the vehicle, and was not pursuing it on the instruction of another law enforcement agency as part of that agency's investigation. Therefore, the government must show Anderson had probable cause to believe the driver committed a traffic violation. "Probable cause is a reasonable ground for belief

supported by less than prima facie proof but more than mere suspicion.” *Blair*, 524 F.3d at 748 (citations omitted).

When a driver travels an Ohio roadway with two or more clearly marked lanes, the driver must stay “as nearly as is practicable, entirely within a single lane or line of traffic . . .” Ohio Rev. Code § 4511.33(A)(1). An officer may stop a vehicle if the officer “witnesses a motorist drift over the lane markings in violation of [section] 4511.33, even without further evidence of erratic or unsafe driving.” *State v. Mays*, 894 N.E.2d 1204, 1210 (Ohio 2008).

Anderson testified, and my review of the video recorded by his dash camera confirms, that Gonzalez-Corea did not merely touch the lane lines with the Expedition’s tires, but repeatedly drove both on and across those lines. (*See* Gov’t’s Ex. 1, dash cam. video, beginning approximately at 23:34:56; 23:35:34; 23:36:14; and 23:36:32). Further, Gonzalez-Corea does not suggest there were any outside circumstances which caused or contributed to the lane departures.

While it is not clear from the dash camera video exactly how far Gonzalez-Corea travelled into the right-hand lane from the center lane or onto the shoulder from the right-hand lane, even a “minor violation” of § 4511.33 gave Anderson sufficient reason to stop the Expedition. *State v. Lamb*, No. 14-03-30, 2003 WL 22995157, at *4 (Ohio Ct. App., Dec. 22, 2003) (upholding trial court’s decision denying defendant’s motion to suppress where dash cam video showed defendant’s vehicle’s tires were “both on and across the center line”). *See also State v. Andrews*, 89 N.E.3d 157, 171-73 (Ohio Ct. App. 2017) (affirming trial court’s denial of suppression motion where trial court credited officer’s testimony that defendant “travelled into the adjacent lane of traffic by half a tire width, and that there was no basis for him to do so”); *State v. Holland*, No. 2016CA00111, 2017 WL 1011585, at *3 (Ohio Ct. App., March 13, 2017) (affirming denial of motion to suppress where defendant’s “tire cross[ed] the fog line by half a tire width and . . . [where defendant] was riding the yellow center line, including to the left of the center line”); and, *State v. Black*, No. 17CA74, at *4

(Ohio Ct. App., May 14, 2018) (holding “de minimis” violation of § 4511.33 occurring when defendant’s driver’s side mirror and tire crossed the lane line was sufficient to justify traffic stop).

There are several instances in which the video reveals the lane line under the vehicle and forward of the passenger rear tire, strongly suggesting the vehicle has travelled over the line, though it is true the dash cam video does not unequivocally show Gonzalez-Corea violated § 4511.33. This case, however, is not about whether Gonzalez-Corea could be convicted of a marked lanes violation. Rather, it concerns the question of whether Anderson acted “upon observed violations which afford[ed him] the quantum of individualized suspicion necessary to ensure [his exercise of] . . . police discretion [was] sufficiently constrained.” *Whren v. United States*, 517 U.S. 806, 817-18 (1996) (citations and quotation marks omitted). The probable-cause determination evaluates whether the officer had “a reasonable ground for belief supported by less than prima facie proof but more than mere suspicion” the vehicle’s driver committed a traffic violation. *Blair*, 524 F.3d at 748; *see also Mays*, 894 N.E.2d at 407-08 (“an officer is not required to have proof beyond a reasonable doubt that someone has violated the marked lane statute in order to make a traffic stop”).

It also is true that Anderson was disciplined by the Ohio Highway Patrol in 2013 for falsifying information in the computer-aided dispatch system connected to his patrol car. I conclude, however, after observing his demeanor and presentation while on the witness stand, that Anderson’s testimony concerning the Expedition’s path of travel onto and over the lane lines was credible and consistent with the events recorded by his vehicle’s dash camera.

Finally, while the defense speculates the Expedition was stopped at the behest of the Border Patrol agent because the Texas license plates suggested the possibility of immigration-related offenses, and while Trooper Anderson testified he primarily was interested in illegal drug interdiction, the officers’ “subjective intent is irrelevant” because there is sufficient evidence to

establish Anderson had probable cause for the traffic stop. *Blair*, 524 F.3d at 748 (citing *Whren*, 517 U.S. at 813).

III. CONCLUSION

Accordingly, Gonzalez-Corea's motion to suppress, (Doc. No. 36), is denied.

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge